

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1413V

UNPUBLISHED

MARGARET SCHWARCK,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 14, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Heather Lynn Pearlman, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On September 17, 2018, Margaret Schwarck filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered on October 10, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 30, 2019, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On February 13, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$92,020.64. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$92,020.64 (representing compensation in the amount of \$90,000.00 for pain and suffering and \$2,020.64 for out-of-pocket medical expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MARGARET SCHWARCK,)	
Petitioner,)	No. 18-1413V ECF
v.)	Chief Special Master Corcoran
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
Respondent.)	

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On September 17, 2018, Margaret Schwarck (“petitioner”) filed a petition for compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. She alleges that, as a result of receiving the influenza vaccine on October 10, 2017, she suffered from a shoulder injury related to vaccine administration (SIRVA). *See* Petition. On September 27, 2019, respondent filed his Vaccine Rule 4(c) report, concluding that petitioner suffered a left SIRVA as defined by the Vaccine Injury Table within the Table timeframe. On September 30, 2019, former Chief Special Master Dorsey issued a ruling on entitlement, finding that petitioner was entitled to compensation for a SIRVA Table injury.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

a lump sum of **\$92,020.64** for all damages, with \$90,000.00 representative of her pain and suffering, and \$2,020.64 representative of her out-of-pocket medical expenses. This amount represents all elements of compensation to which petitioner is entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment, as described below, and requests that the Chief Special Master's decision and the Court's judgment award the following: A lump sum payment of **\$92,020.64** in the form of a check payable to petitioner.² Petitioner agrees.

² Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

/s/Jeffrey T. Sprague
JEFFREY T. SPRAGUE
Trial Attorney
Torts Branch, Civil Division
U. S. Department of Justice
P.O. Box 146, Benjamin Franklin Station
Washington, D.C. 20044-0146
Direct dial: (202) 616-4179

Dated: February 13, 2020